IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3648 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHANANBHAI S. VAGHRI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR GIRISH PATEL for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 5.
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioners have prayed for a declaration that they are entitled to the land bearing survey

No.604 admeasuring 9 acres 27 gunthas of village Lolia, Tal: Dholka, Dist: Ahmedabad and to occupy and enjoy the possession thereof without any hindrance. It appears that the petitioners have also further prayed for a declaration that the notice dated 20-11-1987 issued by the Mamlatdar for taking proceedings under Section 61 of the Bombay Land Revenue Code is illegal, null and void and it is prayed to quash and set aside the same. This matter is called out twice today. The learned advocate appearing on behalf of the petitioners is absent and this is a matter of 1990. Therefore, this court has no other alternative but to decide and dispose of the present Special Civil Application on merits *ex parte* on the basis of the pleadings and the material available on record.

2. It appears that it is the contention of the petitioners that originally the land bearing survey No.604 admeasuring 9 acres 27 gunthas of village Lolia, Tal: Dholka, Dist: Ahmedabad has belonging to Thakor Saheb Jaywantsinhji Sursinhji of Utelia and the said land was given to the father of the petitioner Nos.1,2,4 and 5 and the father-in-law of the petitioner no.3 for cultivation somewhere in the year 1950 as Vethia. It is the contention on behalf of the petitioner that in the

land records of 1950-51, name of Sagarbhai is mentioned. However, thereafter for some reason or the other, in the Revenue Record, the said name disappeared and thereafter, proceedings came to be initiated and even the State of Gujarat started the digging work in the land in question under the scarcity relief and even the petitioners filed Regular Civil Suit No. 39/88 for declaration and permanent injunction in the court of learned Civil Judge (SD), Ahmedabad (Rural), which came to be withdrawn and even in the some part of the land in question, the digging work for the purpose of Talavadi was over. Thereafter, the Mamlatdar initiated the proceedings under Section 61 of the Act and served a notice upon the petitioners under Section 61 of the Bombay Land Revenue Code. It appears from the record that thereafter, the petitioners submitted an application for allotment of the land and the Revenue Department informed the petitioners that the land in question is used for the public purpose as Talavadi and the Panchayat has already resolved to continue the same as Talavadi and still if, the Panchayat wants, the Collector can initiate the proceedings and the petitioners were directed to approach the Collector and thereafter, the petitioners have preferred the present

Special Civil Application.

3. It appears from the record that in the village form, the land in question is shown as Government land, which is in fact used as a Talavadi (Pond) for the village people and the panchayat has also resolved to continue the said land as a Talavadi. It is also born out form the record that even the petitioners had also paid the fine for illegal occupation of the land in question since 1967-68. Not only that even the petitioners submitted an application for allotment of the land and/or regularization of their occupation and it establishes that the petitioners have illegally encroached upon the Government land and they had no legal right to continue with the land in question. Not only that but the petitioners even filed a Regular Civil Suit for declaration and permanent injunction with regard to the land in question, however, the same came to be withdrawn by the petitioners unconditionally. Therefore, it is now not open for the petitioners to contend that they have right to continue with the land in question and they cannot pray for a declaration that they are entitled to the land bearing survey No.604 admeasuring 9 acres 27 gunthas of village Lolia, Tal: Dholka, Dist: Ahmedabad and to occupy and

enjoy the possession thereof without any hindrance. The petitioners are served with notice under Section 61 of the Bombay Land Revenue Code dated 20-11-1987, which is in accordance with law and in fact, the petitioners were called upon to give their explanation and/or submit the reply.

4. In view of the above and in fact withdrawal of the Regular Civil Suit, the present Special Civil Application is required to be dismissed by holding that the petitioners have no right to continue with the land in question.

5. For the reasons as stated above, the petition fails. Rule is discharged. Interim relief granted earlier, stands vacated. However, no order as to costs.

(M.R.SHAH,J)

shekhar/-